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CT LIC S-386984 & SHM 5083

## **TERM AND CONDITIONS OF SERVICE**

- Scope of Terms and Conditions.** The Terms and Conditions of product sales and service projects are limited to those contained herein. Any additional or different terms or conditions in any form delivered by you ("Customer") are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. By accepting delivery of the products or by engaging American Heating Service Ilc. ("Seller") to provide product(s) or perform or produce any services, Customer agrees to be bound by and accepts these Terms and Conditions unless Customer and Seller have signed a separate agreement, in which case the separate agreement will govern. These Terms and Conditions constitute a binding contract between Customer and Seller and are referred to herein as either "Terms and Conditions" or this "Agreement." Customer accepts these Terms and Conditions by making a purchase from or placing an order with Seller or engaging Seller to perform or procure any services. These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions posted on Seller's Site at the time Customer signs the Installation Proposal will govern, unless otherwise agreed in writing by Seller and Customer.
- Payment Terms.** American Heating Service Ilc. is a C.O.D company, which means that the **customer must pay their technician in full upon the completion of work.** We do **NOT** accept checks from first time customers. Customer shall pay Seller according to the terms contained in the Installation Proposal. Final payment shall be due after the work described in the Installation Proposal is substantially completed.
- Zoning and Permits.** Customer agrees to timely furnish all information necessary to secure plans and permits for the work called for under this Agreement, and Customer warrants the work contracted for to be in compliance with applicable zoning, classification and building codes. Any costs for work not in the Estimate but required by lawful authorities to bring the work into compliance with applicable code shall be the responsibility of the Customer. Seller assumes no responsibility for violation of zoning rules/laws.
- Change Orders or Extra Work.** During the progress of the work under this Agreement, if Customer should order extra work not specified in the Agreement, Seller may require such extra work to be considered an agreement separate and aside from this Agreement and may require payment for said extra work in advance.
- Work Schedule.** Work shall be completed within a reasonable time. Performance of this Agreement is subject to labor strikes, fires, acts of war or terrorism, acts of God, adverse weather conditions not reasonably anticipated, unusual delays in transportation, Seller's ability to obtain materials, and/or any cause beyond Seller's control.
- Substitutions.** Should Seller be unable to obtain any material(s) specified in the Agreement or any Change Order, Seller shall have the right at its sole discretion to substitute comparable materials and such substitution shall not affect the Contract Price.
- Excess Materials.** Extra materials left over upon completion shall be deemed Seller's property, and Seller may enter upon the Property's premises to remove excess material(s) at all reasonable hours.
- Supervision Responsibility.** Seller shall supervise and direct the work at Customer's Property, using reasonable skill and attention. Seller shall be solely responsible for the construction means, methods, technique, sequences, and procedures for all work performed at Customer's Property pursuant to this Agreement. Customer shall not interfere with Seller's work forces or Seller's subcontractors.

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9. **Limited Warranty.** Seller shall provide Customer with a limited warranty on service and labor for the duration set forth in the Installation Agreement, beginning on the date of completion of services against defects in the quality of workmanship and/or materials ("Warranty Period"). Seller shall not be liable during or following the Warranty Period for any: (a) damage due to ordinary wear and tear or abusive use; (b) damage due to use of the equipment beyond the design temperatures (cooling set below 70°F, for instance); (c) defects that are the result of characteristics common to the materials used; (d) loss, injury or damages caused in any way by the weather elements; (e) conditions resulting from condensation on, or expansion or contraction or, any materials; (f) any water leak, blockage, freezing, or other malfunction of condensate or drain lines; and/or (g) air leaks arising from structural deficiencies within existing supply/return ducts or transitions. Seller makes no warranty to Buyer regarding materials and/or equipment installed (other than a warranty of title), and Seller authorizes no third person or party to assume any warranty obligation or liability on Seller's behalf. The only warranties applicable to the materials and/or equipment installed are those, if any, extended by the respective manufacturer that shall furnish to Buyer any and all applicable warranty documents. Seller hereby assigns to Buyer, without recourse, any applicable warranties extended to Seller. Such assignment shall constitute Seller's sole obligation and Buyer's sole exclusive remedy from Seller with regard to defective materials and/or equipment installed. This limited warranty is in lieu of all other warranties, statutory or otherwise, express or implied, all representations made by Seller, and all other obligations or liabilities respective of the Services provided at the Property. Seller disclaims all other warranties, express or implied, including without limitation any implied warranty of workmanlike construction, implied warranty of habitability, implied warranty of fitness for a particular purpose or use, and/or implied warranty of merchantability. Under no circumstances shall Seller be liable to Customer for loss of time, loss of use, inconvenience, or any other incidental or consequential damages that may arise from this Agreement. Unauthorized repairs or attempted repairs shall void this warranty entirely.

10. **Performance or Condition of Existing Equipment.** Seller is not responsible for the performance, functionality, or compatibility of existing equipment, ductwork, duct board, controls, or other equipment/materials that is not replaced during a job installation and that Customer agrees to keep in place. In the event that the system fails to operate properly, the Warranty service will only cover the newly installed equipment, controls, or materials, as well as our workmanship. In the event that an existing piece of equipment prevents the proper start up or operation of the new equipment or system, Customer assumes all responsibility for any additional service charges that may be incurred.

11. **Existing Line Set.** Seller is not responsible for any problems with heating or cooling due to the existing line set, which may require repair and replacement for an additional cost to the Customer in the event Seller is unable to pull a 500 micron vacuum on an existing line set. Should Customer reject Seller's recommendation to replace an existing line set, Seller's limited warranty is voided.

12. **Existing Gas Pipe.** Seller is not responsible for the condition of any existing gas pipe that is not readily accessible. Customer is responsible for any additional costs incurred if pressure testing is required to identify leaks and necessary repairs.

13. **Paint, Patchwork, and Repairs.** Seller is not responsible for any painting, patchwork, or repair work that may be required following modification/installation work.

14. **Personal Property.** Seller is not responsible for damage to Customer's personal property left in or near the project area.

15. **Existing Attic Access Stairs.** In the event Customer's existing stairs cannot be safely utilized for the removal and installation of equipment, an alternate method or access may be required. Seller is not responsible for (a) the replacement or repair of attic steps or stairs that must be removed to complete removal or installation work; and/or (b) any property damage resulting from the removal of the attic steps or stairs.

16. **Mold.** Seller shall not be responsible for any claims, damages, actions, costs, or other liabilities, whether direct or indirect, that may be caused by, resulting from, or relating to, mold. The discovery and/or

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removal or any mold or any hazardous materials is excluded from the scope of Seller's work, and Seller reserves the right to stop work until such mold or hazardous materials are removed.

17. **Insurance and Waiver of Subrogation.** Customer shall maintain property insurance upon the entire structure including all work to be performed pursuant to this Agreement to the full insurable value thereof. This insurance shall inure against the perils of fire, theft, extended coverage, vandalism, and malicious mischief. Customer and Seller waive all rights against each other for damages caused by insured perils whether or not such damage is caused by the fault or negligence of any party hereto

18. **Indemnification.** Customer shall indemnify, defend, and hold harmless Seller and its respective directors, officers, employees, agents, sureties, subcontractors, and suppliers from and against any and all losses, costs, expenses, damages, injuries, claims, demands, obligations, liabilities, judgments, fines, penalties, interest and causes of action, including without limitation administrative and legal costs and reasonable attorney's fees, involving the following: (a) injury or death to any person, or damage to or destruction of any property (including loss of use thereof), except to the extent caused by the sole negligence or intentional misconduct of Seller; and (b) any failure of the Customer to comply with the requirements of the Agreement.

19. **Risk of Loss.** Risk of loss shall pass to the Customer upon delivery of materials and equipment to Customer's Property. Seller shall not be responsible for any loss due to fire, theft, vandalism, and/or malicious mischief once delivered to Customer's Property. Customer shall assume all responsibility for any such loss and Customer shall maintain insurance coverage to protect against such loss.

20. **Severability.** Should any part of this Agreement be adjudged to be void, unenforceable, or contrary to public policy, only such void or unenforceable portion shall be stricken and eliminated hereof while the other portions remain valid and enforceable.

21. **Performance.** If Customer fails to perform any of Customer's obligations herein or if Seller, in good faith, believes that the prospect of payment or performance to be impaired, Seller may upon seven (7) days written notice to Customer terminate this Agreement while retaining all mechanic's lien rights as well as right to payment for the full amount of work performed plus reasonable overhead and profit, interest, attorneys' fees, and other charges due and unpaid.

22. **Collections.** If amounts owing under this Agreement are not paid within thirty (30) days, Customer agrees to pay a late charge on any outstanding balance at two per cent (2%) per month or twenty-four per cent (24%) per annum on the unpaid amount calculated from the date payment was due. Customer will be deemed to have accepted Seller's performance as complete under this Agreement unless Customer notified Seller in writing otherwise within thirty (30) days of substantial completion. Should Seller retain the assistance of a third party, including without limitation an attorney, to assist with collection of unpaid amounts due and owing, Customer agrees to pay Seller's costs associated therewith including without limitation reasonable attorneys' fees, court costs, and interest at the maximum legal rate.

23. **Entire Agreement.** This Agreement constitutes the entire agreement between Customer and Seller. No agreements, representations, or warranties other than those specifically set forth herein shall be binding on any of the parties unless set forth in writing and signed by both parties.

24. **Estimates.** An estimate provides our estimation of the cost of a project. It is not a fixed price. Estimates are given when the nature or scope of work may be uncertain, due to concealed conditions, difficulty in assessing problems to be encountered or resolved, or difficulty in determining the means or methods of best accomplishing the work. If we commence work based upon an estimate and the scope of the project or the value of the time and materials as set forth below substantially exceed the estimate, then you shall pay the higher price as computed on a time and materials basis. If it appears that the price of the project is likely to substantially exceed the amount of the estimate, we will make reasonable efforts to notify you when commercially practical to do so. We may propose a change order, a revised estimate, or a bid. Regardless of whether our contract is based upon a bid or an estimate, if you request that we cease work at any time,

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you shall nonetheless remain obligated to pay for all labor and materials supplied by us. If you request that we cease work then the price will be fixed as an amount as specified in the contract, or an amount based upon a time and materials basis, whichever is higher.

25. **Extra Work Required by a Public Authority.** In the event that the applicable public authority or other government agency subsequently requires modifications or additional labor or materials which were not included in the applicable bid or estimate, then the contract price shall be adjusted shall be billed on a time and materials basis. We are not responsible for any special inspections, analysis or reports which are not ordinarily provided by a building inspector.

26. **Time and Material Quoted Work.** When we are quoting out a job at a rate of time and materials, it is unknown exactly what the final cost to you the customer may be, seller may not be held to any number given as an educated guess to you the customer, either verbally or written. You the customer are responsible for the final total of any and all materials and labor needed to complete said job, at our current hourly billing rate (\$129p/h residential & \$169p/h commercial), plus state sales tax at its current rate of 6.35%.

27. **Confidentiality.** All aspects of any dispute including facts or opinions related to the dispute, and communications related to it, shall be strictly confidential. No party shall disparage the other or publish or circulate or disseminate, verbally or in writing, any negative information about the other, in any public media, social media, emails, news reporting, or other forums whatsoever. No other report shall be made to any person or company. Disclosure of confidential information may be made as reasonably necessary to (a) to attorneys, tax and financial advisors, or (b) to others if so required by lawful subpoena or court order and the adverse party is given ten (10) days' advance notice of such disclosure and an opportunity to object to same. The effect of circulating disparaging information being difficult to estimate in advance, the parties reasonably estimate in advance that breach of confidentiality involving disparagement of our business will cause approximately \$500.00 per violation, for which damages awards may be issued.

28. **Mechanic's Liens.** Pursuant to Connecticut Revised Statutes §49-33 et seq. and this agreement, we have a right to claim and enforce a lien on your property for any unpaid balance on your account, including interest and reasonable attorney fees and costs of collection.

29. **Legal Advice.** We have not given and will not give you legal advice of any kind, and we recommend you obtain the advice of an attorney concerning your legal rights. Please do not sign this contract unless you have read and understood all of it

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*\*I, the below signed, have read, understand completely and also agree to the above terms and conditions for the duration, as long as American Heating Service Ilc is my HVAC service contractor, until I terminate the relationship in writing.*

\_\_\_\_\_  
Customer Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Technician Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Technician Signature